

House Bill 1468 (AS PASSED HOUSE AND SENATE)

By: Representative Cole of the 125th

A BILL TO BE ENTITLED
AN ACT

To create the Monroe County Public Facilities Authority; to provide for a short title and legislative findings; to confer powers and impose duties on the authority; to provide for the membership and the appointment of members of the authority and their terms of office, qualifications, duties, powers, and compensation; to provide for vacancies, organization, meetings, and expenses; to provide for definitions; to provide for the issuance and sale of revenue bonds and other obligations and their negotiability, sale, and use of proceeds from such sales; to provide for conditions for issuance of such obligations; to prohibit the pledge of credit for the payment of bonds; to provide for trust indentures and a sinking fund; to provide for payment of bond proceeds; to provide for bondholder remedies and protection; to provide for refunding bonds; to provide for bond validation; to provide for venue and jurisdiction; to provide for trust funds; to provide for the authority's purpose; to provide for charges; to provide for rules and regulations; to provide for tort immunity; to provide for tax exemptions and exemptions from levy and sale; to provide for supplemental powers; to provide for effect on other governments; to provide for liberal construction; to provide for severability; to provide an effective date; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Name of Act.

This Act shall be known and may be cited as the "Monroe County Public Facilities Authority Act."

SECTION 2.

Creation of authority; purpose.

There is created a body corporate and politic to be known as the "Monroe County Public Facilities Authority," which shall be deemed to be a public corporation. Such corporation shall be separate and distinct from any public corporation or other entity heretofore created by the General Assembly and shall be an instrumentality of the State of Georgia exercising governmental powers. The authority is created for the purpose of promoting the public good and general welfare of the citizens of Monroe County and assisting Monroe County in providing facilities, equipment, and services to the citizens of Monroe County in the most efficient means possible. In connection with the exercise of any of its powers, the members of the authority may make findings or determinations regarding the public good and general welfare of Monroe County and the use of facilities, equipment, and services, and such findings or determinations, if made, shall be conclusive and binding.

SECTION 3.

Definitions.

As used in this Act, the term:

(1) "Authority" means the Monroe County Public Facilities Authority created in this Act.

(2) "Cost of the project" shall include (A) the cost of construction, (B) the cost of all land or interests therein, properties, rights, easements, and franchises acquired, (C) the cost of acquiring, constructing, or erecting buildings, improvements, materials, labor, and services, (D) the cost of all machinery and equipment, (E) financing charges, including interest prior to and during construction or acquisition of any project and for six months after such project is placed in service and operational at the level intended, (F) the cost of construction, engineering, architectural, fiscal, accounting, inspection, and legal expenses, relating to a project or to the financing or refinancing of any project and other expenses necessary or incident to determining the feasibility or practicability of any project, (G) administrative expenses relating to any project or to the financing or refinancing thereof, and such other expenses as may be necessary or incident to the financing of a project authorized by this Act, the acquisition, construction, renovation, reconstruction, or remodeling of a project, and the placing of the same in operation. Any such obligation or expense shall be regarded as a part of the cost of the project and may be paid or reimbursed as such out of any funds of the authority, including proceeds of any revenue bonds issued under the provisions of this Act for any such project or projects and

the proceeds of the sale of any contracts, lease agreements, or installment sale agreements or the amounts payable thereunder, either directly or by the creation of interests therein.

(3) "County" means Monroe County, Georgia, or its successor.

(4) "Project" means any capital project determined by the authority to promote the public good or general welfare of the citizens of the county or to be necessary or convenient for the efficient operation of the county, or any of its enterprises or systems, including, but not limited to, the acquisition, construction, renovation, improvement, extension, addition, or equipping of (A) utility systems and improvements, including without limitation, water and sewer systems and facilities, sewage and solid waste disposal systems and facilities, and electric, gas, and other similar facilities or systems, (B) emergency facilities, including emergency, fire, sheriff, and rescue facilities, (C) recreational facilities, including parks, athletic fields, buildings, or facilities or other similar facilities, (D) public safety facilities, including jails, sheriff's offices, facilities, or equipment, state patrol or other law enforcement facilities or equipment, (E) healthcare facilities and equipment, (F) educational, cultural, or historical facilities and equipment, (G) transportation facilities and equipment, and (H) administrative facilities and equipment.

(5) "Revenue bonds" means revenue bonds issued by the authority pursuant to the terms of this Act or under Article 3 of Chapter 82 of Title 36 of the O.C.G.A., known as the "Revenue Bond Law."

SECTION 4.

Powers of the authority.

The authority shall have the power:

(1) To hold, own, lease, transfer, and convey real and personal property or interests;

(2) To sue and be sued;

(3) To have and to use a seal and to alter the same at its pleasure;

(4) To acquire, construct, purchase, own, equip, operate, extend, improve, lease, and sell any project;

(5) To exercise the powers conferred upon a "public corporation" or a "public authority" by Article IX, Section III, Paragraph I of the Constitution of Georgia, such authority being expressly declared to be a "public corporation" or a "public authority" within the meaning of such provision of the Constitution of Georgia;

(6) To acquire property and projects in its own name by gift or by purchase on such terms and conditions and in such manner as it may deem proper. If the authority shall deem it expedient to construct any project on real property or any interest therein or

usufruct which is subject to the control of the county. The county is authorized to convey such real property or interest therein to the authority for no consideration or for such consideration as may be agreed upon by the authority and the county, taking into consideration the public benefit to be derived from such conveyance. The county may transfer such property or interest therein without the necessity of putting the same out for bid and without regard to any determination as to whether or not such property or interest therein is in surplus.

(7) To accept gifts and bequests for its corporate purposes;

(8) To appoint, select, and employ, with or without bidding, as the authority may choose, officers, agents, and employees, including engineering, architectural, and construction experts, fiscal agents, underwriters, or other advisors, and attorneys, and to fix their compensation;

(9) To make and execute with public and private persons and corporations contracts, lease agreements, rental agreements, installment sale agreements, and other instruments, relating to its projects and incident to the exercise of the powers of the authority, including contracts for constructing, renting, leasing, and selling its projects for the benefit of the county; provided, without limiting the generality of this paragraph, that the authority is specifically granted the power to enter into contracts, lease agreements, rental agreements, installment sale agreements, and related agreements for a term not exceeding 50 years as provided in Section III of Article IX of the Constitution of Georgia;

(10) To lease, sell, transfer, or otherwise dispose of any property, real or personal, or assets of the authority, or to assign its rights under its contracts, lease agreements, or installment sale agreements or its right to receive payments thereunder, either directly or through trusts or custodial arrangements whereby interests are created in such contracts, lease agreements, or installment sale agreements or the payments to be received thereunder through the issuance of trust certificates, certificates of participation, custodial receipts, or other similar instruments. In connection with any such sale, lease, transfer or assignment, the authority need not comply with any other provision of law requiring public bidding or any announcement to the public of the sale of such property, assets, or rights;

(11) To accept loans and grants of money or property of any kind from the United States, the State of Georgia, or any political subdivision of the State of Georgia;

(12) To borrow money for any of its corporate purposes and to issue revenue bonds, notes or other types of indebtedness payable solely from funds or revenues of the authority pledged for that purpose and to pledge and assign any of its revenues, income, rent, charges, and fees to provide for the payment of the same and to provide for the rights of the holders of such revenue bonds; provided, however, that the power conferred

by this paragraph may not be exercised after the expiration of four years from the effective date of this Act;

(13) To enter into (A) interest rate swaps, collars, or other types of interest rate management agreements, or (B) credit enhancement or liquidity agreements relating to any obligations of the authority, provided that the obligation of the authority under any such agreements shall not be a general obligation of the authority but shall be a limited obligation of the authority payable from a specific source of funds identified for such purpose. The authority shall be exempt from any requirement of Georgia law requiring a swap management plan or other similar plan relating to interest rate swap agreements;

(14) To make such rules and regulations governing its employees and property as it may in its discretion deem proper;

(15) The authority may be sued the same as any private corporation on any contractual obligation of the authority. The authority shall have the same rights to sue any other person or entity as any private corporation; and

(16) To issue its revenue bonds, notes, or other obligations to finance or refinance any project which may be financed by the county under the Revenue Bond Law of the State of Georgia; provided, however, that the power conferred by this paragraph may not be exercised after the expiration of four years from the effective date of this Act.

SECTION 5.

Members of the authority; terms of office.

The authority shall consist of five members who shall be the persons at the time serving as the five duly elected commissioners of the Monroe County Board of Commissioners, who shall be eligible to succeed themselves. The members of the authority shall hold office for terms coinciding with their terms on the board of commissioners and shall serve until their successors are elected. In the event that the number of members of the Board of Commissioners is changed, then the number of members of the authority shall be correspondingly changed. Immediately after their election to the board of commissioners, each member of the authority shall enter upon their duties. A majority of the members of the authority shall constitute a quorum, and no vacancy on the authority shall impair the right of the quorum to exercise all the rights and perform all the duties of the authority and, in every instance, a majority vote of a quorum shall authorize any legal act of the authority, including all things necessary to authorize and issue revenue bonds. The authority shall elect one of its members as chairperson and shall elect a secretary and treasurer who need not necessarily be a member of the authority. The authority may elect a vice chairperson or any number of assistant secretaries or treasurers as it may from time to time deem necessary or desirable.

1 The members of the authority shall not be entitled to compensation for their services but shall
2 be entitled to and shall be reimbursed for the actual expenses necessarily incurred in the
3 performance of their duties. The authority shall make rules and regulations for its own
4 governance and it shall have perpetual existence. Any change in name or composition of the
5 authority shall in no way affect the vested rights of any person under the provisions of this
6 Act or impair the obligations of any contracts existing under this Act.

7 **SECTION 6.**

8 Issuance and sale of revenue bonds.

9 The authority shall have power and is authorized from time to time to provide for the
10 issuance and sale of negotiable revenue bonds in the manner provided by Article 3 of
11 Chapter 82 of Title 36 of the O.C.G.A., known as the "Revenue Bond Law," for the purpose
12 of paying all or any part of the cost of any one or more projects, including the cost of
13 constructing, reconstructing, equipping, extending, adding to, or improving any such project,
14 or for the purpose of refunding, as herein provided, any such bonds of the authority or any
15 other authority or public body previously issued to finance or refinance the cost of a project.
16 The principal of and interest on such revenue bonds shall be a limited obligation of the
17 authority payable solely from the source or sources of funds specified in the indenture or
18 resolution of the authority authorizing the issuance of such revenue bonds. The revenue
19 bonds of each issue shall be issued and validated under and in accordance with the provisions
20 of the Revenue Bond Law. Such revenue bonds shall mature on such dates, bear interest at
21 such rate or rates, whether fixed or variable, be subject to redemption and have such other
22 terms as the authority may provide in the indenture or resolution relating thereto. Such
23 revenue bonds shall not be subject to any provision of Georgia law limiting the rate of
24 interest payable thereon and may be sold in a negotiated sale or in a public sale as the
25 authority may determine.

26 **SECTION 7.**

27 Power to incur loans or issue notes.

28 The authority shall also have the power to incur indebtedness from time to time for the
29 purpose of financing or refinancing any project or refunding any obligations previously
30 issued for such purpose, or for any other purpose, whether in the form of a loan or through
31 the issuance of notes, and the principal of and interest on such notes or loans shall be a
32 limited obligation of the authority payable solely from the source or sources of funds
33 specified in the resolution or indenture of the authority authorizing such loan or the issuance

1 of such notes. Any such loan or notes shall not be required to be validated as a condition to
2 the issuance thereof and shall have such terms as may be specified by the authority in the
3 resolution or indenture authorizing the same.

4 **SECTION 8.**

5 Negotiable instruments; bonds and other obligations exempt from taxation.

6 All revenue bonds issued under the provisions of this Act shall have all the qualities and
7 incidents of negotiable instruments under the negotiable instruments law of this state. All
8 such bonds, and any loan incurred or note issued as provided in this Act, are declared to be
9 issued or incurred for an essential public and governmental purpose and such obligations and
10 the interest thereon shall be exempt from all taxation within this state.

11 **SECTION 9.**

12 Revenue bonds or notes not a debt or general obligation.

13 Revenue bonds or notes issued under the provisions of this Act or any loan incurred as
14 authorized herein shall not constitute a debt or a pledge of the faith and credit of the State of
15 Georgia or of any political subdivision thereof, including the county, but shall be payable
16 solely from the sources as may be designated in the resolution or indenture of the authority
17 authorizing the issuance of the same. The issuance of such obligations shall not directly,
18 indirectly, or contingently obligate the State of Georgia or any political subdivision thereof,
19 including the county, to levy or to pledge any form of taxation whatever for the payment
20 thereof. No holder of any bond or receiver or trustee in connection therewith shall have the
21 right to enforce the payment thereof against any property of the State of Georgia or any
22 political subdivision thereof, including the county, nor shall any such bond constitute a
23 charge, lien, or encumbrance, legal or equitable, upon any such property. All such
24 obligations shall contain on their face a recital setting forth substantially the foregoing
25 provisions of this section. Nothing in this section shall be construed to prohibit the State of
26 Georgia or any political subdivision or agency thereof, including the county, from obligating
27 itself to pay the amounts required under any contract entered into with the authority pursuant
28 to Article IX of the Constitution of the State of Georgia, or any successor provision,
29 including from funds received from taxes to be levied and collected for that purpose to the
30 extent necessary to pay the obligations contractually incurred with the authority, and from
31 any other source.

SECTION 10.

Issuance of bonds or obligations under indentures or resolutions.

In the discretion of the authority, any issue of such revenue bonds, notes, or other obligations may be secured by a trust indenture by and between the authority and a trustee, which may be any trust company or bank having the powers of a trust company within or outside of the State of Georgia. Such trust indenture may pledge or assign fees, tolls, rents, revenues, and earnings to be received by the authority, including the proceeds derived from the financing, sale, or lease, from time to time, of any project. Either the resolution providing for the issuance of revenue bonds or other obligations or such trust indenture may contain such provisions for protecting and enforcing the rights and remedies of the owners of such bonds or obligations as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the authority or any lessee or purchaser in relation to the acquisition and construction of any project, the maintenance, operation, repair, and issuance of any project, and the custody, safeguarding, and application of all moneys, including the proceeds derived from the sale or lease of any project or from the sale of any such bonds, notes, or other obligations and may also contain provisions concerning the conditions, if any, upon which additional bonds notes or other obligations may be issued, whether on a parity with, or subordinate to any other obligations issued by the authority. Such indenture or resolution may set forth the rights and remedies of the owners of such obligations and of the trustee. In addition to the foregoing, such trust indenture may contain such other provisions as the authority may deem reasonable and proper for the security of the owners of such bonds or other obligations or otherwise necessary or convenient in connection with the issuance of such obligations. All expenses incurred in carrying out such trust indenture may be treated as a part of the cost of maintenance, operation, and repair of the project affected by such indenture.

SECTION 11.

Security for the payment of bonds or other obligations.

The authority may assign or pledge any property or revenues to the payment of the principal and interest on revenue bonds of the authority as the resolution authorizing the issuance of the bonds or the trust indenture may provide. The use and disposition of such property or revenues assigned to the payment of bonds or other obligations shall be subject to the indenture or resolution authorizing the issuance of such revenue bonds or obligations. Any lien created by the authority for the payment of such bonds or obligations may be a first lien or a subordinate lien as the authority may provide, and any such indenture or resolution may

1 provide, at the option of the authority, for the issuance of additional bonds or other
2 obligations sharing any lien on a parity or subordinate lien basis.

3 **SECTION 12.**

4 Refunding bonds or obligations.

5 The authority is authorized to provide by resolution for the issuance of obligations, whether
6 revenue bonds, notes, or other obligations, for the purpose of refunding any revenue bonds
7 or other obligations issued under the provisions of this Act or under any other provision of
8 Georgia law so long as such bonds or other obligations were issued for a purpose or project
9 for which the authority could issue bonds. The issuance of such refunding bonds or other
10 obligations and all the details thereof, the rights of the holders thereof, and the duties of the
11 authority with respect to the same shall be governed by the foregoing provisions of this Act
12 insofar as the same may be applicable.

13 **SECTION 13.**

14 Principal office; venue.

15 The principal office of the authority shall be in the county, and the venue of any action
16 against it shall be in the county. Any action pertaining to the validation of any bonds issued
17 under the provisions of this Act and for the validation of any contract entered into by the
18 authority shall be brought in the Superior Court of Monroe County, and such court shall have
19 exclusive original jurisdiction of such actions. Service upon the authority of any process,
20 subpoena, or summons shall be effected by serving the same personally upon any member
21 of the authority.

22 **SECTION 14.**

23 Validation of revenue bonds.

24 Revenue bonds of the authority shall be confirmed and validated in accordance with the
25 procedure now or hereafter set forth in Article 3 of Chapter 82 of Title 36 of the O.C.G.A.,
26 known as the "Revenue Bond Law," as the same now exists or may hereafter be amended.
27 The petition for validation shall also make a party defendant to such action the county, if the
28 county has or will contract with the authority with respect to the project for which bonds are
29 to be issued and are sought to be validated. The bonds, when validated, and the judgment
30 of validation shall be final and conclusive with respect to the validity of such bonds against

the authority and against all other persons or entities, regardless of whether such persons or entities were parties to such validation proceedings.

SECTION 15.

No impairment of rights.

While any of the bonds or other obligations issued by the authority or any interests in contracts of the authority remain outstanding, the powers, duties, or existence of the authority or of its officers, employees, or agents shall not be diminished or impaired in any manner that will affect adversely the interest and rights of the holders of such bonds or obligations or such interests in contracts of the authority. The provisions of this section of this Act shall be for the benefit of the authority and of the holders of any such bonds or obligations and interests in contracts of the authority and, upon the issuance of bonds or obligations or the creation of interests in contracts of the authority under the provisions of this Act, shall constitute a contract with the holders of such bonds or obligations or such interests in contracts of the authority.

SECTION 16.

Trust Funds; permitted investments.

All moneys received by the authority pursuant to this Act, whether as proceeds from the sale of revenue bonds or obligations of the authority, as grants or other contributions, or as revenues, income, fees, and earnings, shall be deemed to be the trust funds to be held and applied solely as provided in this Act and in such resolutions and trust indentures as may be adopted and entered into by the authority pursuant to this Act. Any such moneys or funds may be invested from time to time in such investments as may be permitted under the indenture, agreement, or resolution establishing the fund or account in which such funds are held, or if not held in such a fund or account, in such investments as would be permitted investments for a development authority created under O.C.G.A. Section 36-62-1, et seq., as amended.

SECTION 17.

Power to set rates, fees, and charges.

The authority is authorized to prescribe and fix and collect rates, fees, tolls, rents, and charges and to revise, from time to time, and collect such revised rates, fees, tolls, rents, and charges for the services, facilities, or commodities furnished, including leases, concessions,

1 or subleases of its projects, and to determine the price and terms at and under which its
2 projects may be sold, leased or otherwise disposed of.

3 **SECTION 18.**

4 Essential governmental function; no taxes or assessments.

5 All property or interests in property owned by the authority shall be public property held and
6 owned for governmental purposes and shall be exempt from ad valorem taxation. The
7 exercise of the powers conferred upon the authority hereunder shall constitute an essential
8 governmental function for a public purpose, and the authority shall be required to pay no
9 taxes or assessments upon any of the property acquired by it or under its jurisdiction, control,
10 possession, or supervision or upon its activities in the operation and maintenance of property
11 acquired by it or of buildings erected or acquired by it or any fees, rentals, or other charges
12 for the use of such property or buildings or other income received by the authority. The tax
13 exemption herein provided shall not include an exemption from sales and use tax on property
14 purchased by or for the use of the authority.

15 **SECTION 19.**

16 Immunity of authority and members.

17 The authority shall have the same immunity and exemption from liability for torts and
18 negligence as the State of Georgia, and the officers, agents, and employees of the authority,
19 when in performance of the work of the authority, shall have the same immunity and
20 exemption from liability for torts and negligence as officers, agents, and employees of the
21 State of Georgia.

22 **SECTION 20.**

23 Authority property not subject to levy and sale.

24 The property of the authority shall not be subject to levy and sale under legal process.

25 **SECTION 21.**

26 Authority area of operation.

27 The scope of the authority's operations shall be limited to the territory embraced within the
28 territorial limits of the county, as the same now or may hereafter exist; provided, however,
29 that nothing in this section shall prevent the authority from contracting with any entity,

1 public or private, outside of the county with respect to any project located in the county, or
2 located outside of the county, if the authority shall determine that entering into such contract
3 is in the best interest of the authority and in furtherance of its public purposes.

4 **SECTION 22.**

5 Supplemental powers.

6 This Act does not in any way take away from the authority any power which may be
7 conferred upon it by law but is supplemental thereto.

8 **SECTION 23.**

9 No power to impose taxes.

10 The authority shall not have the right to impose any tax on any person or property.

11 **SECTION 24.**

12 Act to be liberally construed.

13 This Act shall be liberally construed to effect the purposes hereof.

14 **SECTION 25.**

15 Severability of provisions.

16 Should any sentence, clause, phrase, or part of this Act be declared for any reason to be
17 unconstitutional or invalid, the same shall not affect the remainder of this Act, or any part
18 hereof, other than the part so held to be invalid, but the remaining provisions of this Act shall
19 remain in full force and effect, and it is the express intention of this Act to enact each
20 provision of this Act independently of any other provision hereof.

21 **SECTION 26.**

22 Effective date.

23 This Act shall become effective upon its approval by the Governor or upon its becoming law
24 without such approval.

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SECTION 27.
Conflicting laws.

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All laws and parts of laws in conflict with this Act are repealed.